



State of Wisconsin


LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 03/05/2009 (Per: PJK)





Appendix A ... Part 02 of 03

 The 2009 drafting file for LRB-0525

has been transferred to the drafting file for

2009 LRB-1924

 This cover sheet, the final request sheet, and the final version of the 2009 draft were copied on yellow paper, and returned to the original 2005 drafting file.

 The attached 2009 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



State of Wisconsin


LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 10/10/2008 (Per: PJK)





Appendix A ... Part 01 of 02

 The 2007 drafting file for LRB-3161

has been transferred to the drafting file for

2009 LRB-0525

 This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2005 drafting file.

 The attached 2007 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2007 DRAFTING REQUEST

Bill

Received: **09/11/2007**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Judith Robson (608) 266-2253**

By/Representing: **Helen Dicks**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Insurance - auto**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Robson@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Uninsured and underinsured motorist coverage

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 09/20/2007	bkraft 09/21/2007		_____			
/P1			rschluet 09/21/2007	_____	mbarman 09/21/2007		
/P2	pkahler 12/03/2007	bkraft 12/07/2007	rschluet 12/07/2007	_____	cduerst 12/07/2007		
/P3	pkahler	bkraft	rschluet	_____	mbarman		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	02/21/2008	02/21/2008	02/22/2008	_____	02/22/2008		

FE Sent For:

<END>

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/?	pkahler 09/20/2007	bkraft 09/21/2007					
/P1			rschluet 09/21/2007		mbarman 09/21/2007		
/P2	pkahler 12/03/2007	bkraft 12/07/2007	rschluet 12/07/2007		cduerst 12/07/2007		

/P3 bjk 2/21

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<END>

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/P1		p2 12/7/07	rschluet 09/21/2007		mbarman 09/21/2007		

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<END>

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May Contact:

Addl. Drafters:

Subject: **Insurance - auto**

Extra Copies:

Submit via email: **YES**

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Uninsured and underinsured motorist coverage

Instructions:

See Attached

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/?	pkahler	/PI bjk 9/21					
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9227

<END>

FE Sent For:

1 **TRUTH IN FAMILY AUTO POLICY ACT**

2 **AUTOMOBILE AND MOTOR VEHICLE INSURANCE**

3 Before 1995, insurance companies were required to meet the reasonable
4 expectations of persons purchasing automobile insurance in Wisconsin. Under
5 § 632.32(4)(a), Stats. 1979, auto insurance policies were required to provide uninsured
6 motorist (UM) coverage. In a long line of cases interpreting this requirement, the
7 Wisconsin Supreme Court held that “the purpose of uninsured motorists coverage is to
8 compensate an insured who is the victim of an uninsured motorist’s negligence to the
9 same extent as if the uninsured motorist were insured.” *Nicholson v. The Home*
10 *Insurance Companies*, 137 Wis.2d 581, 591, 405 N.W.2d 327 (1987), quoting *Vidmar v.*
11 *American Family Mut. Ins. Co.*, 104 Wis.2d 360, 360, 312 N.W.2d 129 (1981).
12 Consistent with this purpose, the Court in *Nicholson* invalidated an attempt to reduce the
13 purchased limits of uninsured motorist coverage by payments made by the insurance
14 company under the liability portion of the policy, stating:

15 Insurance companies are required to put uninsured motorist provisions in
16 their automobile insurance policies for the protection of an injured party,
17 not for their own protection. If the purpose of the uninsured motorist
18 statute is to be achieved, the plaintiff must be entitled to the proceeds of
19 the uninsured motorist coverage without reductions that would not have
20 been available had the uninsured motorist been insured.

21
22 *Nicholson*, 137 Wis.2d at 592.

23
24 Before 1995, no statute required insurance companies to provide *underinsured*
25 motorist (UIM) coverage. However, where such coverage was included, the Wisconsin
26 Supreme Court recognized in *Wood v. American Family Insurance Mutual Ins. Co.*, 148
27 Wis.2d 639, 654, 436 N.W.2d 594 (1989) that

1 (t)he purpose of UIM coverage is to compensate the victim of an
2 underinsured motorist's negligence where the third party's liability limits
3 are not adequate to fully compensate the victim for his or her injuries.
4

5 In *Wood*, the insurance company issued a policy with \$100,000 in UIM coverage
6 and wanted to subtract the amount received from the negligent party's liability insurance
7 policy (\$25,000) from the limits of UIM coverage where the insured's damages were
8 conceded to exceed \$225,000. The insurance company argued that the "amount payable"
9 in UIM benefits should mean the limits of UIM coverage, not the damages suffered by its
10 insured. The Court rejected this argument, observing that "under the (insurance
11 company's) position, an underinsured liability limit is an *illusion* because an insured will
12 never be entitled to recover up to that limit." *Wood*, 148 Wis.2d at 653. The court
13 concluded:

14 We find that a reasonable person in the position of an insured would
15 understand the words "amounts payable" to be the equivalent of damages
16 compensable because when purchasing UIM coverage, we believe that a
17 reasonable insured expects to be protected against a loss caused by another
18 that is not covered by the underinsured driver's liability coverage.
19

20 *Wood*, 148 Wis.2d at 654.
21

22 These principles were applied to invalidate an attempt by an insurance company
23 to collect a premium for \$25,000 in UIM coverage while, at the same time, enforcing a
24 "reducing" clause which provided that those limits would be reduced by the \$25,000
25 payment received from the liability insurance company. *Hoglund v. Secura Insurance*,
26 176 Wis.2d 265, 500 N.W.2d 354 (1993). Noting that the minimum required liability
27 insurance coverage was \$25,000, the court held the promise of UIM coverage to be
28 "illusory" and refused to enforce the reducing clause:
29
30

1 Because Hoglund has paid a premium for UIM coverage under which no
2 benefits will ever be paid, the coverage is illusory and against public
3 policy.
4

5 176 Wis.2d at 271.
6

7 Subsequently, in *Matthiesen v. Continental Casualty Co.*, 193 Wis.2d 192, 532
8 N.W.2d 729 (1995), the Supreme Court held that “reducing clauses” in UIM policies
9 were invalid, except to the extent that they prevented double recovery, under Wisconsin’s
10 “stacking” statute, § 631.43(1), Stats. 1993-1994. That statute precluded insurance
11 companies from reducing the aggregate protection of an insured below the lesser of the
12 damages actually suffered or the aggregate of total coverage promised by the policy. Mr.
13 Matthiesen had purchased an insurance policy which covered two listed automobiles and
14 paid separate premiums for \$100,000 in UIM coverage on each vehicle. He suffered
15 \$500,000 in damages because of the negligence of a driver who had only \$300,000 in
16 liability insurance. His insurance company argued that it owed him nothing in UIM
17 benefits because of what it described as an “unambiguous” reducing clause. The court
18 held that the “plain language of the stacking statute precludes enforcement of the
19 reducing clauses,” and reaffirmed that “UIM insurance contracts must be construed
20 according to the reasonable expectations of the insured.” *Matthiesen*, 193 Wis.2d at 203.

21 The result in *Matthiesen* was required by a long line of decisions which held that
22 “where a single insurance contract incorporates indemnity coverage for two vehicles,
23 charging separate unit premiums, the insurer has issued two policies within the meaning
24 of” the stacking statute. *Krause v. Massachusetts Bay Ins. Co.*, 161 Wis.2d 711, 715, 468
25 N.W.2d 755 (Ct. App., 1991). In *Krause*, the court of appeals held that this rule applies
26 regardless of whether there are “two or more” policies issued by different companies or

1 "two or more" vehicles insured under one policy as long as separate premiums were
2 collected for each vehicle.

3 In apparent response to these rulings, the legislature in 1995 enacted revisions to
4 Wisconsin's automobile insurance statutes which permitted insurance companies to
5 defeat the reasonable expectations of those purchasing insurance by:

6 1. Expressly authorizing "reducing" clauses in UM and UIM insurance policies;
7 and

8
9 2. Expressly authorizing "anti-stacking" provisions which effectively prevent an
10 insured from obtaining full coverage where a separate premium is paid for such
11 coverage for 2 or more vehicles insured under the same policy.

12
13 Even before 1995, insurance companies were permitted to defeat the reasonable
14 expectations of those purchasing UIM coverage by:

15 1. Defining an underinsured motor vehicle as one "with limits of liability
16 coverage which are less than the limits of UIM coverage."

17
18 In this situation, purchased UIM coverage in any amount was unavailable if the
19 negligent party had liability coverage which was equal to or greater than the purchased
20 UIM limits, regardless of the damages suffered. For example, if the liability limits were
21 \$100,000 and the UIM limits also \$100,000, the insured could recover no UIM benefits
22 even though his/her damages were well in excess of those limits.

23 2. Providing for the reduction of amounts paid by the liability insurance company
24 from the "limits of UIM coverage," rather than the amount of damages suffered
25 by the injured insured.

26
27 This meant that even where the definition of a UIM vehicle was met, the injured
28 insured could never receive the full limits of purchased UIM coverage. For example, if
29 purchased UIM limits were \$100,000 and the negligent party had \$50,000 in liability
30 insurance, the most the injured insured could recover in UIM benefits was \$50,000

1 (\$100,000 minus \$50,000), regardless of the extent of damages suffered. The only
2 exception to this result occurs where the injured party, through extensive and expensive
3 litigation, can satisfy the courts that there is such "contextual ambiguity" in the policy as
4 to make the coverage purchased illusory.

5 In addition, the proposal changes the definition of "uninsured motorist" to remove
6 the requirement that a vehicle must be "hit" by an unidentified motorist. Wisconsin
7 adopted the "physical contact rule" in uninsured motorist claims arising from hit-and-run
8 accidents based on the language of Wis. Stats. § 632.32(4)(a)2.b. *Hayne v. Progressive*
9 *Northern Ins. Co.*, 115 Wis.2d 68, 339 N.W.2d 588 (1983), affirmed in *Progressive*
10 *Northern Ins. Co. v. R. Romanshek, et al.*, 2005 WI 67, 281 Wis. 2d 300, 697 N.W.2d
11 417 and *DeHart v. Wisconsin Mutual Ins. Co.*, 2007 WI 91. However, this interpretation
12 has fallen into disfavor by Courts across the country.

13 Under current law, if a party is run off the road, but does not sustain a physical
14 "hit," then a person is denied coverage under his uninsured motorist policy. In both
15 *Romanshek* and *DeHart*, there was evidence of the unidentified driver by eyewitnesses,
16 but because there was no "hit," uninsured motorist coverage was denied.

17 In *Theis v. Midwest Security Ins. Co.*, 232 Wis. 2d 749, 606 N.W.2d 162 (2000),
18 the Wisconsin Supreme Court noted:

19 "The primary purpose of the uninsured motorist statute is to compensate
20 an injured person who is the victim of an uninsured motorist's negligence
21 to the same extent as if the uninsured motorist were insured." *Id.* at 761.

22 If there is no meaningful concern that a claim may be fraudulent, the policy of the
23 uninsured motorist statute to provide compensation to the same extent as if the uninsured
24 motorist were insured ought to be given effect.

1 In addition, a party seeking recovery in the absence of physical contact would still
2 be required to meet the burden of proof under Wisconsin Jury Instruction - Civil 205,
3 which would require an insured to establish that the unidentified vehicle caused the
4 accident by evidence, "that is clear, satisfactory, and convincing to a reasonable
5 certainty." The net effect would be to provide greater protection against fraudulent
6 claims than exists in many cases where physical contact could be alleged.

7 This bill creates a "Truth in Family Auto Policy Act." It is designed to return
8 fairness to Wisconsin residents by meeting their "reasonable expectations" when
9 purchasing automobile insurance. More specifically, it provides that insureds will get the
10 full benefit of what they have paid for in their auto policy.

11 Here is what the legislation does:

- 12 • Defines uninsured (UM) and underinsured (UIM) motorist coverage. UIM is defined
13 by comparing the tortfeasor's liability insurance limit with the amount of damages (or
14 injuries) actually sustained by the insured.
- 15 • Mandates UIM coverage for automobile policies.
- 16 • Eliminates all reducing clauses and anti-stacking provisions in automobile policies.
- 17 • Defines umbrella or excess liability policies, and requires insurers to offer UM/UIM
18 coverage for umbrella or excess liability policies.
- 19 • Eliminates the requirement that a vehicle be "hit" by an unidentified driver to be
20 considered an "uninsured motorist."

Actual Draft

1 SECTION 1. 631.43 (3) of the statutes is amended to read:

2 631.43 (3) EXCEPTION. Subsection (1) does not affect the rights of insurers to exclude,
3 ~~limit or reduce~~ coverages under s. 632.32 (5) ^{limit} (b), and (c) ^{restrict} ~~or (f) to (j)~~.

4 SECTION 2. 632.32 (2) (d) through (h) of the statutes are created to read:

5 632.32 (2) (d) Uninsured motorist. "Uninsured motorist" is the owner or operator
6 of a motor vehicle or motorcycle for which a bodily injury liability insurance plan
7 or financial responsibility requirements under s.632.32 (4) are not in effect. It
8 also includes:

- 9 *See (4)(a) 2.* a. If before or after the accident the liability insurer of the motorist is declared
10 insolvent by a court of competent jurisdiction.
11 b. An unidentified motorist involved in a hit-and-run accident.

12 (e) Uninsured motorist coverage. "Uninsured motorist coverage" means coverage
13 for the protection of persons insured under that coverage who are legally entitled
14 to recover damages for bodily injury, death, sickness or disease from owners or
15 operators of uninsured motor vehicles.

16 ^{motor vehicle} (f) Underinsured motorist. "Underinsured motorist" is the owner or operator of a
17 motor vehicle or motorcycle to which a bodily injury liability policy applies at the
18 time of the accident but its limit for bodily injury liability is less than the amount
19 needed to fully compensate an insured for his or her damages.

20 (g) Underinsured motorist coverage. "Underinsured motorist coverage" means
21 coverage for the protection of persons insured under that coverage who are legally
22 entitled to recover damages for bodily injury, death, sickness or disease from
23 owners or operators of underinsured motor vehicles.

1 (h) Umbrella or Excess liability policy. Umbrella or excess liability policy means
2 an insurance contract providing at least \$1,000,000 of liability coverage per
3 person or per occurrence in excess of certain required underlying liability
4 insurance coverage or a specified amount of self-insured retention.

5 SECTION 3. 632.32 (4) of the statutes is amended to read:

6 (4) REQUIRED UNINSURED MOTORIST, UNDERINSURED MOTORIST

7 AND MEDICAL PAYMENTS COVERAGES. Every policy of insurance subject
8 to this section that insures with respect to any motor vehicle registered or
9 principally garaged in this state against loss resulting from liability imposed by
10 law for bodily injury or death suffered by any person arising out of the ownership,
11 maintenance or use of a motor vehicle shall contain therein or supplemental
12 thereto provisions approved by the commissioner:

13 ~~(a) Uninsured motorist. 1. For the protection of persons injured who are legally~~
14 ~~entitled to recover damages from owners or operators of uninsured motor vehicles~~
15 ~~because of bodily injury, sickness or disease, including death resulting therefrom,~~
16 ~~in limits of at least \$25,000 per person and \$50,000 per accident.~~

17 ~~1. In this paragraph "uninsured motor vehicle" also includes:~~

18 ~~a. An insured motor vehicle if before or after the accident the liability insurer~~
19 ~~of the motor vehicle is declared insolvent by a court of competent jurisdiction.~~

20 ~~b. An unidentified motor vehicle involved in a hit-and-run accident.~~

21 ~~3. Insurers making payment under the uninsured motorists' coverage shall, to the~~
22 ~~extent of the payment, be subrogated to the rights of their insureds.~~

1 (a) UNINSURED MOTORIST AND UNDERINSURED MOTORIST
2 COVERAGE. No policy of insurance may be renewed, delivered or issued for
3 delivery, or executed in this state with respect to any motor vehicle registered or
4 principally garaged in this state unless separate uninsured and underinsured
5 motorist coverages are provided therein. Each such coverage, at a minimum,
6 must provide limits of \$25,000 because of injury to or the death of one person in
7 any accident and \$50,000 because of injury to or the death of two or more persons
8 in any accident.

9 (b) MEDICAL PAYMENTS COVERAGES.

10 ~~(b) Medical payments.~~ To indemnify for medical payments or chiropractic
11 payments or both in the amount of at least \$1,000 per person for protection of all
12 persons using the insured motor vehicle from losses resulting from bodily injury
13 or death. The named insured may reject the coverage. If the named insured rejects
14 the coverage, it need not be provided in a subsequent renewal policy issued by the
15 same insurer unless the insured requests it in writing. Under the medical or
16 chiropractic payments coverage, the insurer shall be subrogated to the rights of its
17 insured to the extent of its actual payments. Coverage written under this
18 paragraph may be excess coverage over any other source of reimbursement to
19 which the insured person has a legal right.

20 **SECTION 4. 632.32 (4) (n) of the statutes is created to read:**

21 (4n) WRITTEN OFFER OF UNINSURED AND UNDERINSURED MOTORIST
22 COVERAGES FOR UMBRELLA AND EXCESS LIABILITY POLICIES.

new
as
amended
(a)?

1 (a) An insurer writing umbrella and/or excess liability policies that insure with
2 respect to a motor vehicle registered or principally garaged in this state against
3 loss resulting from liability imposed by law for bodily injury or death suffered
4 by a person arising out of the ownership, maintenance or use of a motor
5 vehicle is required to provide a written offer of uninsured and underinsured
6 motorist coverage, including a brief description of the coverage, to named
7 insureds. The offer shall occur on the application form or in conjunction with
8 either the notice of or the delivery of the first renewal of each such policy
9 occurring after 120 days after [effective date]. The named insureds may reject
10 the coverage, but must do so in writing. If the named insureds reject the
11 coverage, it need not be provided in a subsequent renewal policy issued by the
12 same insurer unless the insureds request it in writing.

13 (b) No insurer is required to provide uninsured and underinsured motorist
14 coverages in excess of umbrella or excess liability policy limits.

15 **SECTION 5. 632.32 (5) (f) through (j) are deleted.**

16 ~~(f) A policy may provide that regardless of the number of policies involved,~~
17 ~~vehicles involved, persons covered, claims made, vehicles or premiums shown on~~
18 ~~the policy or premiums paid the limits for any coverage under the policy may not~~
19 ~~be added to the limits for similar coverage applying to other motor vehicles to~~
20 ~~determine the limit of insurance coverage available for bodily injury or death~~
21 ~~suffered by a person in any one accident.~~

22 ~~(g) A policy may provide that the maximum amount of uninsured or underinsured~~
23 ~~motorist coverage available for bodily injury or death suffered by a person who~~

1 was not using a motor vehicle at the time of an accident is the highest single limit
2 of uninsured or underinsured motorist coverage, whichever is applicable, for any
3 motor vehicle with respect to which the person is insured.

4 (h) A policy may provide that the maximum amount of medical payments
5 coverage available for bodily injury or death suffered by a person who was not
6 using a motor vehicle at the time of an accident is the highest single limit of
7 medical payments coverage for any motor vehicle with respect to which the
8 person is insured.

9 (i) A policy may provide that the limits under the policy for uninsured or
10 underinsured motorist coverage for bodily injury or death resulting from any one
11 accident shall be reduced by any of the following that apply:

12 1. Amounts paid by or on behalf of any person or organization that may be
13 legally responsible for the bodily injury or death for which the payment is
14 made.

15 2. Amounts paid or payable under any worker's compensation law.

16 3. Amounts paid or payable under any disability benefits laws.

17 (j) A policy may provide that any coverage under the policy does not apply to a
18 loss resulting from the use of a motor vehicle that meets all of the following
19 conditions:

20 1. Is owned by the named insured, or is owned by the named insured's spouse
21 or a relative of the named insured if the spouse or relative resides in the same
22 household as the named insured.

23 2. Is not described in the policy under which the claim is made.

1

~~2. Is not covered under the terms of the policy as a newly acquired or~~

2

~~replacement motor vehicle.~~

Kahler, Pam

From: Gary, Aaron
Sent: Tuesday, September 11, 2007 4:51 PM
To: Kahler, Pam
Subject: RE: definition

Hi Pam,

It generally would include motorcycles. However, it would not include a motorcycle used EXCLUSIVELY for off-road riding (such a motorcycle need not be registered).

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Kahler, Pam
Sent: Tuesday, September 11, 2007 4:06 PM
To: Gary, Aaron
Subject: definition

Hi, Aaron:

Could you please look at the definition of "motor vehicle" in s. 632.32 (2) (a) and tell me if it includes motorcyces? Thanks!

Pam

Pamela J. Kahler
Legislative Attorney
Legislative Reference Bureau
608-266-2682



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3161/

PJK:.....

PI
Re
Lbjk

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION ✓

LPS- Please check spelling.

SA ✓
x-ref ✓

(in 9-20)
D-vote ←

gen cat ←

1 AN ACT; relating to: uninsured and underinsured motorist coverages.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 631.43 (3) of the statutes is amended to read:

3 ✓ 631.43 (3) EXCEPTION. Subsection (1) does not affect the rights of insurers to
4 ✓ exclude, limit or reduce restrict coverage under s. 632.32 (5) (b), or (c) or (f) to (j). ✓

History: 1975 c. 375; 1979 c. 102; 1995 a. 21.

***NOTE: I have amended this subsection in this way because s. 632.32 (5) (b) and
(c) authorize limiting and restricting coverage. OK? ←

5 SECTION 2. 632.32 (2) (c) of the statutes is renumbered 632.32 (2) (h). ✓

6 SECTION 3. 632.32 (2) (cm) of the statutes is created to read:

7 ✓ 632.32 (2) (cm) "Umbrella or excess liability policy" means an insurance
8 contract providing at least \$1,000,000 of liability coverage per person or per

1 occurrence in excess of certain required underlying liability insurance coverage or
2 a specified amount of self-insured retention.

3 **SECTION 4.** 632.32 (2) (d) of the statutes is created to read:

4 632.32 (2) (d) "Underinsured motor vehicle" means a motor vehicle to which all
5 of the following apply:

6 1. The motor vehicle is involved in an accident with an insured.

7 2. A bodily injury liability insurance policy applies to the motor vehicle at the
8 time of the accident.

9 3. The limits under the bodily injury liability insurance policy are less than the
10 amount needed to fully compensate the insured for his or her damages.

****NOTE: I did not define "underinsured motorist" or "uninsured motorist" because
those terms are not used in the section.

11 **SECTION 5.** 632.32 (2) (e) of the statutes is created to read:

12 632.32 (2) (e) "Underinsured motorist coverage" means coverage for the
13 protection of persons insured under that coverage who are legally entitled to recover
14 damages for bodily injury, death, sickness, or disease from owners or operators of
15 underinsured motor vehicles.

16 **SECTION 6.** 632.32 (2) (f) of the statutes is created to read:

17 632.32 (2) (f) "Uninsured motor vehicle" means a motor vehicle that is involved
18 in an accident with an insured and with respect to which, at the time of the accident,
19 a bodily injury liability insurance policy is not in effect and the owner or operator has
20 not furnished proof of financial responsibility for the future under subch. III of ch.
21 344. "Uninsured motor vehicle" also includes both of the following motor vehicles
22 involved in an accident with an insured:

****NOTE: By "financial responsibility requirements" were you referring to the
requirements under ch. 344? I didn't think the reference to "under s. 632.32 (4)" made

sense since all motor vehicle liability insurance policies are required to contain the limits in s. 632.32 (4). ✓

1 1. An insured motor vehicle if before or after the accident the liability insurer
2 of the motor vehicle is declared insolvent by a court of competent jurisdiction.

3 2. An unidentified motor vehicle. ✓

4 **SECTION 7.** 632.32 (2) (g) of the statutes is created to read: ✓

5 ✓ 632.32 (2) (g) "Uninsured motorist coverage" means coverage for the protection
6 of persons insured under that coverage who are legally entitled to recover damages
7 for bodily injury, death, sickness, or disease from owners or operators of uninsured
8 motor vehicles. ✓

9 **SECTION 8.** 632.32 (4) (intro.) of the statutes is amended to read: ✓

10 ✓ 632.32 (4) **REQUIRED UNINSURED AND UNDERINSURED** MOTORIST AND MEDICAL
11 PAYMENTS COVERAGES. (intro.) Every policy of insurance subject to this section that
12 insures with respect to any motor vehicle registered or principally garaged in this
13 state against loss resulting from liability imposed by law for bodily injury or death
14 suffered by any person arising out of the ownership, maintenance, or use of a motor
15 vehicle shall contain therein or supplemental thereto provisions approved by the
16 commissioner for all of the following coverages: ✓

History: 1975 c. 375, 421; 1979 c. 102, 104; 1979 c. 177 ss. 67, 68; 1979 c. 221; 1981 c. 284; 1983 a. 243, 459; 1985 a. 146 s. 8; 1995 a. 21, 448; 1997 a. 48; 1999 a. 31, 162.

17 **SECTION 9.** 632.32 (4) (a) (title) of the statutes is repealed. ✓

18 **SECTION 10.** 632.32 (4) (a) 1. of the statutes is renumbered 632.32 (4) (a) and
19 amended to read: ✓

20 ✓ 632.32 (4) (a) ~~For the protection of persons injured who are legally entitled to~~
21 ~~recover damages from owners or operators of uninsured motor vehicles because of~~

1 ~~bodily injury, sickness or disease, including death resulting therefrom~~ Uninsured
2 motorist coverage, in limits of at least \$25,000 per person and \$50,000 per accident.

History: 1975 c. 375, 421; 1979 c. 102, 104; 1979 s. 177 ss. 67, 68; 1979 c. 221; 1981 c. 284; 1983 a. 243, 459; 1985 a. 146 s. 8; 1995 a. 21, 448; 1997 a. 48; 1999 a. 31, 162.

3 SECTION 11. 632.32 (4) (a) 2. of the statutes is repealed.

4 SECTION 12. 632.32 (4) (a) 3. of the statutes is repealed.

5 SECTION 13. 632.32 (4) (am) of the statutes is created to read:

6 632.32 (4) (am) Underinsured motorist coverage, in limits of at least \$25,000
7 per person and \$50,000 per accident.

8 SECTION 14. 632.32 (4) (b) of the statutes is amended to read:

9 632.32 (4) (b) ~~Medical payments.~~ To Medical payments coverage to indemnify
10 for medical payments or chiropractic payments or both in the amount of at least
11 \$1,000 per person for protection of all persons using the insured motor vehicle from
12 losses resulting from bodily injury or death. The named insured may reject the
13 coverage. If the named insured rejects the coverage, it need not be provided in a
14 subsequent renewal policy issued by the same insurer unless the insured requests
15 it in writing. Under the medical or chiropractic payments coverage, the insurer shall
16 be subrogated to the rights of its insured to the extent of its payments. Coverage
17 written under this paragraph may be excess coverage over any other source of
18 reimbursement to which the insured person has a legal right.

History: 1975 c. 375, 421; 1979 c. 102, 104; 1979 c. 177 ss. 67, 68; 1979 c. 221; 1981 c. 284; 1983 a. 243, 459; 1985 a. 146 s. 8; 1995 a. 21, 448; 1997 a. 48; 1999 a. 31, 162.

****NOTE: Since this paragraph retains the language regarding subrogation, do you
want to keep the subrogation language in par. (a) and add it to par. (am)?

****NOTE: Since under this draft all policies must contain underinsured motorist
coverage, do you want to repeal sub. (4m), which applies only to policies that do not have
underinsured motorist coverage?

19 SECTION 15. 632.32 (4r) of the statutes is created to read:

20 632.32 (4r) REQUIRED WRITTEN OFFERS OF UNINSURED AND UNDERINSURED
21 MOTORIST COVERAGES FOR UMBRELLA OR EXCESS LIABILITY POLICIES. (a) An insurer

1 writing umbrella or excess liability policies that insure with respect to a motor
2 vehicle registered or principally garaged in this state against loss resulting from
3 liability imposed by law for bodily injury or death suffered by a person arising out
4 of the ownership, maintenance, or use of a motor vehicle shall provide written offers
5 of uninsured motorist coverage and underinsured motorist coverage, which offers
6 shall include a brief description of the coverage offered. An insurer is required to
7 provide the offers required under this subsection only one time with respect to any
8 policy in the manner provided in par. (b).

9 (b) 1. Each application for an umbrella or excess liability policy issued on or
10 after the effective date of this subdivision [revisor inserts date], shall contain a
11 written offer of both uninsured motorist coverage and underinsured motorist
12 coverage.

* ****NOTE: Will this be construed to mean that you must get both or neither
* coverages?

13 2. For umbrella or excess liability policies that are in effect on the effective date
14 of this subdivision [revisor inserts date], the insurer shall provide a written offer
15 of uninsured motorist coverage to the named insureds under each policy that does
16 not include uninsured motorist coverage and a written offer of underinsured
17 motorist coverage to the named insureds under each policy that does not include
18 underinsured motorist coverage. The insurer shall provide an offer under this
19 subdivision in conjunction with the notice of the first renewal of the policy occurring
20 after the effective date of this subdivision [revisor inserts date].

21 (c) An applicant or named insureds may reject the coverage offered, but must
22 do so in writing. If the applicant or named insureds reject the coverage offered, the
23 insurer is not required to provide the rejected coverage under a policy that is renewed

1 to the person by that insurer unless an insured under the policy subsequently
2 requests the coverage in writing.

3 (d) No insurer is required to provide uninsured or underinsured motorist
4 coverage in excess of the umbrella or excess liability policy limits.

***NOTE: Is the above provision necessary? Why would anyone think that the
insurer would be required to provide uninsured or underinsured motorist coverage in
excess of the policy's liability limits? Or does this mean even if the applicant or named
insured asks for it? If so, that should be added.

5 **SECTION 16.** 632.32 (5) (f) of the statutes is renumbered 632.32 (6) (d) and
6 amended to read:

7 632.32 (6) (d) ~~A~~ No policy may provide that, regardless of the number of policies
8 involved, vehicles involved, persons covered, claims made, vehicles or premiums
9 shown on the policy, or premiums paid, the limits for any coverage under the policy
10 may not be added to the limits for similar coverage applying to other motor vehicles
11 to determine the limit of insurance coverage available for bodily injury or death
12 suffered by a person in any one accident.

History: 1975 c. 375, 421; 1979 c. 102, 104; 1979 c. 177 ss. 67, 68; 1979 c. 221; 1981 c. 284; 1983 a. 243, 459; 1985 a. 146 s. 8; 1995 a. 21, 448; 1997 a. 48; 1999 a. 31, 162.

13 **SECTION 17.** 632.32 (5) (g) of the statutes is renumbered 632.32 (6) (e) and
14 amended to read:

15 632.32 (6) (e) ~~A~~ No policy may provide that the maximum amount of uninsured
16 motorist coverage or underinsured motorist coverage available for bodily injury or
17 death suffered by a person who was not using a motor vehicle at the time of an
18 accident is the highest single limit of uninsured motorist coverage or underinsured
19 motorist coverage, whichever is applicable, for any motor vehicle with respect to
20 which the person is insured.

History: 1975 c. 375, 421; 1979 c. 102, 104; 1979 c. 177 ss. 67, 68; 1979 c. 221; 1981 c. 284; 1983 a. 243, 459; 1985 a. 146 s. 8; 1995 a. 21, 448; 1997 a. 48; 1999 a. 31, 162.

1 **SECTION 18.** 632.32 (5) (h) of the statutes is renumbered 632.32 (6) (f) and
2 amended to read:

3 **632.32 (6) (f)** A No policy may provide that the maximum amount of medical
4 payments coverage available for bodily injury or death suffered by a person who was
5 not using a motor vehicle at the time of an accident is the highest single limit of
6 medical payments coverage for any motor vehicle with respect to which the person
7 is insured.

History: 1975 c. 375, 421; 1979 c. 102, 104; 1979 c. 177 ss. 67, 68; 1979 c. 221; 1981 c. 284; 1983 a. 243, 459; 1985 a. 146 s. 8; 1995 a. 21, 448; 1997 a. 48; 1999 a. 31, 162.

8 **SECTION 19.** 632.32 (5) (i) of the statutes is renumbered 632.32 (6) (g), and
9 632.32 (6) (g) (intro.), as renumbered, is amended to read:

10 **632.32 (6) (g) (intro.)** A No policy may provide that the limits under the policy
11 for uninsured motorist coverage or underinsured motorist coverage for bodily injury
12 or death resulting from any one accident shall be reduced by any of the following that
13 apply:

History: 1975 c. 375, 421; 1979 c. 102, 104; 1979 c. 177 ss. 67, 68; 1979 c. 221; 1981 c. 284; 1983 a. 243, 459; 1985 a. 146 s. 8; 1995 a. 21, 448; 1997 a. 48; 1999 a. 31, 162.

14 **SECTION 20.** 632.32 (5) (j) of the statutes is renumbered 632.32 (6) (h), and
15 632.32 (6) (h) (intro.), as renumbered, is amended to read:

16 **632.32 (6) (h) (intro.)** A No policy may provide that any coverage under the
17 policy does not apply to a loss resulting from the use of a motor vehicle that meets
18 all of the following conditions:

History: 1975 c. 375, 421; 1979 c. 102, 104; 1979 c. 177 ss. 67, 68; 1979 c. 221; 1981 c. 284; 1983 a. 243, 459; 1985 a. 146 s. 8; 1995 a. 21, 448; 1997 a. 48; 1999 a. 31, 162.

***NOTE: Do you want to simply get rid of the above provisions as permitted
provisions under s. 632.32 (5) or do you want to move them to sub. (6), as I have done, to
make them prohibited provisions? Is there any reason why these provisions could not be
included in an insurance policy if they are not explicitly prohibited?

19

(END)

Handwritten note with arrow pointing left

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3161/2dn

PJK:.....

Date

I did not specify motorcycles separately in the definitions of uninsured and underinsured motor vehicles because they are included under the definition of motor vehicle in s. 632.32 (2) (a). ✓

For the requirement related to offering uninsured and underinsured coverages for umbrella or excess liability policies, must the two coverages go together, i.e., only both or neither may be purchased? ✓

Do you want to delay the effective date for a few months to provide preparation time for the offers that must be provided with umbrella or excess liability policy applications? ✓

This draft contains a number of embedded NOTES after provisions that I had questions or comments about. ✓

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3161/P1dn
PJK:bjk:rs

September 21, 2007

I did not specify motorcycles separately in the definitions of uninsured and underinsured motor vehicles because they are included under the definition of motor vehicle in s. 632.32 (2) (a).

For the requirement related to offering uninsured and underinsured coverages for umbrella or excess liability policies, must the two coverages go together, i.e., only both or neither may be purchased?

Do you want to delay the effective date for a few months to provide preparation time for the offers that must be provided with umbrella or excess liability policy applications? *120 days*

This draft contains a number of embedded NOTES after provisions that I had questions or comments about.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

211 South 130

get rid of anti stacking & indemnity clause

1995 Act (undo)

why just get Act 21 or 418
undo?

underinsured → is at least limit of liability coverage?

eliminate hit & run problem (must be contact)

Define med pay cov → coverage for

indemnify for medical payment

or diagnostic payment

& make out the rest to say subrograted

(unless right is waived)
for all 3 types of cov

* repeal (4m)

Delay whole bill 120 days

beginning
of
house
& bells